

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,

Petitioner,

v.

SINGAC HEALTHCARE, LLC,

Respondent.

Civil Action No. 23-145
(MEF) (LDW)

ORDER

United States Magistrate Judge Wettre issued a Report and Recommendation, denying the United States' petition to enforce an administrative subpoena, on the ground that the subpoena calls for information protected by the attorney work product doctrine.

The contours of the doctrine, especially perhaps in the context of government enforcement actions, may sometimes be hard to pin down.

But any assessment of an invocation of the doctrine necessarily requires the sort of careful and close-to-the-ground factual analysis Judge Wettre has undertaken, including her in camera review as to the Respondent's state of mind. See generally Martin v. Bally's Park Place Hotel & Casino, 983 F.2d 1252, 1260 (3d Cir. 1993) ("Only by looking to the state of mind of the party preparing the document . . . can we determine whether this test has been satisfied."); United States v. Rockwell Int'l, 897 F.2d 1255, 1266 (3d Cir. 1990) ("The question whether a document was prepared in anticipation of litigation is often a difficult factual matter. . . . It [is] necessary . . . for the . . . court to determine with specificity [the] motivation in creating and maintaining the . . . file."); see also Sharp v. Gov't of Virgin Islands, 77 F. App'x 82, 85 (3d Cir. 2003) ("In determining whether a document . . . is protected work product,

courts consider the nature of the document and the factual circumstances of the particular case.").

The United States has not objected to any of Judge Wettre's factual or legal conclusions, or to any aspect of her Report. (It is indeed not clear whether continuing to proceed with this petition remains a live issue for the United States.)

Against this backdrop, and in light of the standard of review that applies here, see Equal Emp. Opportunity Comm'n v. City of Long Branch, 866 F.3d 93, 100 (3d Cir. 2017), the Court accepts the Report and Recommendation.



DATE: January 3, 2024

Michael E. Farbiarz, U.S.D.J.